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**TITLE 405 OFFICE OF THE SECRETARY OF
FAMILY AND SOCIAL SERVICES**

Proposed Rule
LSA Document #02-184

DIGEST

Adds 405 IAC 1-19 and 405 IAC 1-20 concerning provisions affecting notification requirements and change of ownership for all providers in the Medicaid program, and defines how funds will be allocated (paid and recouped) to long term care providers when a change of ownership occurs. Effective 30 days after filing with the secretary of state.

405 IAC 1-19

405 IAC 1-20

SECTION 1. 405 IAC 1-19 IS ADDED TO READ AS FOLLOWS:

Rule 19. Ownership and Control Disclosures

405 IAC 1-19-1 Information to be disclosed

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3

Affected: IC 12-13-7-3; IC 12-15

Sec. 1. (a) In accordance with and in addition to 42 CFR 455, Subpart B and 42 CFR 1002, Subpart A, as amended, the following disclosure requirements apply to all providers of Medicaid services and shall be disclosed in accordance with this rule:

- (1) The name and address of each person with an ownership or control interest in the disclosing entity or in any subcontractor in which the disclosing entity has direct or indirect ownership of five percent (5%) or more.**
- (2) Whether any of the persons named, in compliance with subdivision (1), is related to another as spouse, parent, child, or sibling.**
- (3) The name of any other disclosing entity in which a person with an ownership or control interest in the disclosing entity also has an ownership or control interest. This requirement applies to the extent that the disclosing entity can obtain this information by requesting it in writing from the person. The disclosing entity must:
 - (A) keep copies of all these requests and the responses to them;**
 - (B) make them available to the office upon request; and**
 - (C) advise the office when there is no response to a request.****
- (4) The name, address, and Social Security number of any agent or managing employee.**

(b) Any document or agreement, stipulating ownership interests, or rights, duties, and liabilities of the entity or its members, required to be filed with the secretary of state, whether it be a single filing or a periodic filing, shall also be filed with the office or its fiscal agent. In the case of a partnership, the partnership agreement, if any, and any amendments thereto, shall be filed with the office immediately upon creation or alteration of the partnership.

(c) Upon any change of ownership interests, the entity and its members are responsible for notifying the office within ten (10) business days of the change unless the provider is:

- (1) a nursing facility;**
- (2) a community residential facility for the developmentally disabled; or**

(3) an intermediate care facility for the mentally retarded (long term care facilities).

(d) A long term care facility provider shall comply with notification requirements set forth in 405 IAC 1-20 for change of ownership.

(e) The office may suspend payment to an existing provider or reject a prospective provider's application for participation if the provider fails to disclose ownership or control information as required by this rule and 405 IAC 1-14.6-5. (*Office of the Secretary of Family and Social Services; 405 IAC 1-19-1*)

405 IAC 1-19-2 Time and manner of disclosure

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3

Affected: IC 12-13-7-3; IC 12-15

Sec. 2. (a) Any disclosing entity that is a long term care facility must supply the information specified in this rule to the Indiana state department of health at the time it is surveyed.

(b) Any disclosing entity that is not a long term care facility must supply the information specified in this rule to the office or its fiscal agent at any time there is a change in ownership or control.

(c) Any new provider must supply the information specified in this rule at the time of filing a complete application.

(d) Providers are required to notify the office upon such time as the information specified in this rule changes within forty-five (45) days of the effective date of change in such form as the office shall prescribe. Long term care providers involved in a change of ownership shall provide notification in accordance with 405 IAC 1-20. New nursing facility providers are required to notify the office in accordance with this rule and 405 IAC 1-14.6-5. (*Office of the Secretary of Family and Social Services; 405 IAC 1-19-2*)

SECTION 2. 405 IAC 1-20 IS ADDED TO READ AS FOLLOWS:

Rule 20. Change of Ownership (CHOW) for a Long Term Care Facility

405 IAC 1-20-1 General

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3

Affected: IC 12-13-7-3; IC 12-15

Sec. 1. (a) As used in this rule, "long term care facility" means any of the following:

- (1) A nursing facility.
- (2) A community residential facility for the developmentally disabled.
- (3) An intermediate care facility for the mentally retarded.

(b) For Medicaid provider agreement purposes, the provider is the party directly or ultimately responsible for operating the business enterprise. This party is legally responsible for decisions and liabilities in a business management sense. The same party also bears the final responsibility for operational decisions made in the capacity of a governing body and for the consequences of those decisions.

(c) Whether the owner of the provider enterprise (provider) owns the premises or rents or leases the premises from a landlord or lessor is immaterial. However, if the provider enters into an agreement, which allows the landlord to make or participate in decisions about the ongoing operation of the provider enterprise, this indicates that the provider has entered into either a partnership agreement or a management agency agreement instead of a property lease. A new partnership agreement constitutes a change of ownership. (*Office of the Secretary of Family and Social Services; 405 IAC 1-20-1*)

405 IAC 1-20-2 Notification requirements

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3

Affected: IC 12-13-7-3; IC 12-15

Sec. 2. (a) When a change of ownership in a long term care facility is contemplated, the transferor provider shall notify the office, or its fiscal agent, no less than forty-five (45) days prior to the effective date of sale or lease agreement that a change of ownership may take place.

(b) Notification shall be in writing and include the following:

(1) A copy of the agreement of sale or transfer.

(2) The expected date of transfer.

(3) If applicable, the name of any individual who has an ownership or control interest, is a managing employee, or an agent of the transferor, who will also hold an ownership or control interest, be a managing employee, or be an agent of the transferee.

(c) The transferee shall make application to the office for an amendment to the transferor's provider agreement no less than forty-five (45) days prior to the expected date of transfer in accordance with this rule and 405 IAC 1-14.6-5(c).

(d) If notification requirements from both the transferor and the transferee have not been met on or before the forty-fifth day before the effective date of the change of ownership, all Medicaid payments due to the transferor will be held until such time as the information is received, reviewed, and approved for completeness. Payments will be held until such time as the transferee has fulfilled enrollment requirements in the Medicaid program as set forth in the provider manual and provider enrollment packet.

(e) The effective date of the change of ownership will be determined by the Indiana state department of health's certification and transmittal and amended by the Indiana state department of health, if necessary, to correspond with the transferor/transferee agreement of sale or transfer. (*Office of the Secretary of Family and Social Services; 405 IAC 1-20-2*)

405 IAC 1-20-3 Change of ownership types

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3

Affected: IC 12-13-7-3; IC 12-15

Sec. 3. A change of ownership occurs under, but is not limited to, any of the following circumstances:

(1) For a sole proprietorship, if a provider of services is an entity owned by a single individual, a transfer of title and property to the enterprise to another person or firm, whether or not including a transfer of title to the real estate or if the former sole proprietor becomes one of the members of a business entity succeeding him or her as the new owner.

(2) For a partnership, in a partnership, the removal, addition, or substitution of an individual partner in the entity, in the absence of an express statement to the contrary in the partnership agreement, dissolves the old partnership and creates a new partnership.

(3) For a corporation, the merger of the applicant or provider corporation into another corporation, or the consolidation of two (2) or more corporations, resulting in the creation of a new corporation. In an incorporated provider entity, the corporation is the owner. The governing body of the corporation is the group having direct legal responsibility under state law for operation of the corporation's entity, whether that body is:

(A) a board of trustees;

(B) a board of directors;

(C) the entire membership of the corporation; or

(D) known by some other name.

(Office of the Secretary of Family and Social Services; 405 IAC 1-20-3)

405 IAC 1-20-4 Change of ownership effect

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3

Affected: IC 12-13-7-3; IC 12-15

Sec. 4. When there is a change of ownership of a long term care facility, the office will transfer the provider agreement to the transferee subject to the terms and conditions under which it was originally issued and subject to any existing plan of correction and pending audit findings as follows:

- (1) The transferor and transferee shall reach an agreement between themselves concerning Medicaid reimbursements, underpayments, overpayments, and civil monetary penalties.**
- (2) From the effective date of change of ownership and if all requirements are met, all reimbursements will be made to the transferee, regardless of whether the reimbursement was incurred by a current owner or previous owner.**
- (3) From the effective date of change of ownership, the transferee shall assume liability for repayment to the office of any amount due the office, regardless of whether liability was incurred by a current owner or operator or by a previous owner or operator.**
- (4) Liability of current and previous providers to the office shall be joint and several.**
- (5) A current or previous owner or lessee may request from the office a list of all known outstanding liabilities due the office by the facility and of any known pending office actions against a facility that may result in further liability.**
- (6) For purposes of this section, examples of reimbursements, overpayments, and penalties shall include, but not be limited to, the following:**
 - (A) Outstanding claims.**
 - (B) Any retro rate adjustment that results in an underpayment or overpayment based upon the transferor's cost report.**
 - (C) Amounts identified during past, present, or future audits that pertain to an audit period prior to a change in ownership.**
 - (D) Pending or completed surveillance utilization review (SUR) audit.**
 - (E) Imposition of penalties due to failure of the provider to be in substantial compliance with applicable federal requirements for nursing facilities participation in the Medicare or Medicaid program.**
 - (F) Civil monetary penalties.**
 - (G) Amounts established by final administrative decisions.**

(Office of the Secretary of Family and Social Services; 405 IAC 1-20-4)

405 IAC 1-20-5 Record retention

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-13-7-3; IC 12-15

Sec. 5. The transferee shall take possession of the Medicaid records of the transferor and safeguard them for no less than three (3) years from the date of the last claim reimbursed by the office or until any pending administrative or judicial appeal is closed, whichever is longer. *(Office of the Secretary of Family and Social Services; 405 IAC 1-20-5)*

SECTION 3. Upon the effective date of 405 IAC 1-19-2, all disclosing entities have sixty (60) days to comply.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 27, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Room C, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed new rules concerning provider notification and change of ownership requirements. Written comments may be directed to the Indiana Government Center-South, 402 West Washington Street, Room W451, MS-27 Office of General Counsel, Attention: Maureen Bartolo, Indianapolis, Indiana 46204. Correspondence should be identified in the following manner: "COMMENTS RE: PROPOSED RULE AMENDMENT FOR NOTIFICATION AND CHANGE OF OWNERSHIP LSA #02-184". Written comments received will be made available for public display at the above listed address of the Office of General Counsel.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

John Hamilton
Secretary
Office of the Secretary of Family and Social Services